

MOTION FILED
JAN 19 1979

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

NO. 78-91

R. W. JONES, SR., et al.,
Petitioners,
v.

CHARLES T. WOLF, et al.,
Respondents.

**ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA**

**RESPONDENTS' MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF AND RESPONDENTS'
SUPPLEMENTAL BRIEF**

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SUPPLEMENTAL BRIEF

Pursuant to Rule 41(6) of the Rules of the Supreme Court of the United States, Respondents respectfully move the Court for leave to file a supplemental brief in the above-entitled case.

Respondents respectfully submit that consideration of this supplemental brief is necessary to apprise the Court of material cited extensively in Petitioners' Reply Brief which is outside of the Record and contrary to the Stipulation of Facts, and to clarify misimpressions.

sions conveyed by the Reply Brief concerning the principal questions of law in this case.

Respectfully submitted,

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RESPONDENTS' SUPPLEMENTAL BRIEF

Petitioners' Reply Brief contains matters which are both outside of the Record and contrary to the Stipulation of Facts agreed upon by the parties, and creates misimpressions concerning the key questions of law in this case.

I.

**DETERMINATION OF THE IDENTITY OF
THE CONGREGATION WHICH IS "TRUE" TO
PCUS IS IRRELEVANT TO THE RESOLUTION
OF THIS PROPERTY DISPUTE.**

Petitioners assert "that Respondents acknowledge that PCUS had authority to determine which of the competing factions constituted the true congregation of VPC." Petitioners' Reply Brief at 1-2. This assertion

is simply untrue. Respondents never have conceded that PCUS has the authority to determine the identity of the persons for whose benefit the property of the church corporation is held. Respondents argued in their Brief that PCUS was empowered only to determine which of the competing factions constituted *its* "true congregation" or faction. Respondents' Brief at 5, n. 9.

There is a critical distinction between (a) the entire congregation of VPC, and (b) the faction of the congregation which PCUS recognizes as being in communion and fellowship with PCUS. As noted previously, the determination of which of the competing factions is loyal or "true" to PCUS is irrelevant. Title to the property of VPC is in the *congregation* of VPC, and not in the minority that PCUS recognizes as the "true congregation." The *congregation* of VPC is that group of persons which on May 27, 1973 — the date of the resolution of separation — was entitled to vote on all matters concerning the local congregation, including the disposition of the real property of VPC. On that date, it is clear that the congregation by a majority vote could have empowered the trustees of VPC to convey fee simple title to the premises without acquiescence by PCUS and that PCUS would have no claim to the sale proceeds either by virtue of the Book of Church Order or any theory of implied trust. There is no distinction between this complete local congregational power over local church property and the right of a majority to withdraw themselves and their property from PCUS.

Accordingly, as Respondents repeatedly have emphasized, the "true congregation" recognized by PCUS, and the entire congregation of VPC which holds title

to the premises of the church, are not one and the same as Petitioners suggest. A determination of which of the two competing factions is loyal or "true" to PCUS is thus irrelevant unless PCUS can demonstrate that it had a pre-existing property interest in the premises of VPC. Using the precise approach sanctioned by this Court in *Sharpsburg*, the Georgia courts concluded that PCUS had no rights in the property of VPC. See Respondents' Brief at 6-9.

II.

ALTHOUGH PCUS GENERALLY IS A HIERARCHICAL CHURCH, IT NEVERTHELESS IS CONGREGATIONAL IN FORM WITH RESPECT TO LOCAL CHURCH PROPERTY.

Petitioners concede that:

An otherwise hierarchical church, with an explicit charter provision giving local congregations exclusive power over certain matters, would not be deemed hierarchical with regard to such matters, and thus, the *Watson-Serbian* deference rule would not apply. Petitioners' Reply Brief at 9, n. 8.

There is absolutely no difference in principle between this illustration, the facts in the instant case, and the facts before this Court in *Sharpsburg*. In all of these instances, the denomination has no power with respect to local church property, and the fact that the denomination otherwise is hierarchical is irrelevant.

In *Sharpsburg*, the Churches of God were primarily "presbyterial" (hierarchical) in organization. 241

A.2d 691, at 699-700. The Maryland courts found, however, that with respect to local church property, the Churches of God were congregational in form. Thus, the Maryland courts were not required to yield to the "judgment" of a church judicatory which purported to award title to local church property to one of several competing factions.

There is no distinction between the facts at issue in *Sharpsburg* and those in dispute in the instant case. In both cases, a church judicatory of a hierarchical church purported to exercise jurisdiction over local church property which was solely under the control of the local congregation. Although PCUS generally is hierarchical in structure, it nevertheless is clearly congregational with respect to local church property. Indeed, Sections 6-1 and 6-2 of the Book of Church Order vest sole and exclusive power with respect to local church property in the local congregation. As noted above, the local congregation is that entire group of persons which was entitled to vote on church business matters, not the minority which was thereafter recognized as the adherents of PCUS.

Contrary to the impression conveyed by Petitioners in their Reply Brief, the materials quoted at length on pages 6-8 of their Reply Brief are both outside of the Record and contrary to the Stipulation of Facts in this case and, therefore, should be disregarded by the Court. Even if these materials had been part of the Record below, the outcome would not be changed because these are merely proposals which were not approved as amendments to the Book of Church Order.

CONCLUSION

Respondents respectfully urge this Court to disregard the submitted materials which are outside of the Record and to affirm the decisions below.

Respectfully submitted,

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